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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 1520th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 19 July 1996, at 10 a.m.

Chairman: Mr. AGUILAR URBINA

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 3) (continued)

Third periodic report of Peru (continued) (CCPR/C/83/Add.1; HRI/CORE/1/Add.43/Rev.1)

1. Ms. EVATT remarked that the third periodic report of Peru (CCPR/C/83/Add.1) said very little about the de facto situation. The decline in terrorism, extrajudicial executions and disappearances, the appointment of the Ombudsman and the creation of other new institutions were all to be welcomed; but it was disappointing that the re-establishment of the rule of law and respect for human rights had not proceeded more rapidly.

2. She remained most concerned about the provisions with regard to arrest and detention. According to article 2 (24) (f) of the Constitution, persons suspected of terrorism, espionage or illegal drug trafficking could be held for 15 days without supervision - a provision that was not in compliance with the Covenant. According to subparagraph (g), incommunicado detention was permitted in circumstances that were certainly not allowed by the Covenant. Even the safeguard that arrest must be by warrant could be withdrawn in an emergency. To abrogate the provisions for the judicial supervision of arrest and detention was totally incompatible with the Covenant, even in time of declared emergency. That appeared, however, to be recognized to some extent in article 200 of the Constitution, where it was stated that the exercise of habeas corpus was not suspended during regimes of exception. She therefore wondered on what authority habeas corpus could actually be suspended, and what justification there could be for Legislative Decree No. 824 of 24 April 1996, which provided for such suspension in the case of persons remanded in custody on suspicion of drug trafficking. That clearly raised the issue of the violation of articles 9 (4) and 26 of the Covenant. According to information in her possession, the President of the Republic himself had publicly acknowledged that persons were being held in custody unjustly. Could the Peruvian delegation provide figures in that connection? Had the President's wish that the persons concerned be brought to trial been implemented? Or had they been freed?

3. The principles and rights of the judicial function established in article 139 of the Constitution were simply overridden by the special laws on terrorism, treason and drug trafficking. But where was the constitutional authority for that? Many of her colleagues had spoken of the threat posed to the basic institutions of the judiciary by anonymous justice; her own special concern was with the origins of such a system, the manner in which the judges in question were selected and their qualifications, and the question whether they could refuse to be involved in such a system. Had alternative methods of protecting the judiciary from threats to their security been considered?

4. By overriding the guarantees of protection for suspects and accused persons, and indeed by setting aside the basic principles of justice, Peru was undermining the standing and independence of the judiciary. She inquired as to the relationship between the Judicial Coordination Council and the National

Council of the Judiciary, wondering whether the membership and manner of appointment to the former body did not pose yet another threat to the independence of the judicial function.

5. How was popular participation in the appointment and recall of judges (art. 139 (17) of the Constitution) implemented? How was the special jurisdiction of the peasant and native communities, which could be based on customary law (art. 149 of the Constitution) coordinated with the justices of the peace and the other instances of the judicial power?

6. Finally, she requested the Peruvian delegation to provide a specific answer to the question in part I (i) of the list of issues, relating to the exemption from liability that could be accorded in certain situations to members of the native communities (para. 383 of the report).

7. Mr. EL SHAFEI noted that on 14 June 1995, the Peruvian Congress had passed Law No. 26479, the so-called first Amnesty Law, article 1 of which granted a general amnesty to all those members of the security forces and civilians who were the subject of complaints, investigations, indictments, trials or convictions, as well as to persons serving prison sentences for human rights violations committed between May 1980 and June 1995. Two weeks later, Law No. 26492 had been adopted, effectively preventing not only any action to challenge the earlier law, but any steps by the judiciary to test its legality. There had been national and international protests in response to those actions. Replying to the concerns voiced by the United Nations Special Rapporteurs on extrajudicial, summary and arbitrary executions, on torture and on the independence of judges and lawyers, and by the Chairman of the Working Group on Enforced or Involuntary Disappearances, the Peruvian Minister for Foreign Affairs had stated that the passing of the first Amnesty Law did not contradict international human rights treaties, because the latter did not expressly prohibit the application of article 102 of the Constitution (and more specifically the exercise of the congressional right of amnesty) or article 139 (and more specifically the exercise of the congressional right of pardon).

8. Quoting from paragraph 15 of the Committee's general comment 20, he said that its view on the incompatibility of amnesties with the duty of States to investigate acts of torture was fully consistent with the Declaration on the Protection of all Persons from Enforced Disappearances and with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, both of which explicitly prohibited the granting of blanket immunity for those involved in human rights violations.

9. It had also been argued that the amnesty laws formed part of the process of pacification. But how could the closing of investigations, the granting of immunity and the annulment of sentences passed by the courts in regard to human rights violations advance the process of national reconciliation?

10. The second Amnesty Law nullified the fundamental principles of constitutionality and was certainly incompatible with the guarantee contained in article 200 (5) of the Peruvian Constitution itself concerning the so-called "Action of Unconstitutionality". To demonstrate the Committee's abiding concern at the undermining of the legal system and the judiciary and

the consequent impediments to the authority of the Constitution and to the implementation of the Covenant, he quoted from the conclusions it had reached after consideration of the second periodic report and supplementary report of Peru in 1992.

11. He asked two specific questions: what current guarantees existed to ensure the independence and integrity of the judiciary; and what were the guarantees for the observance of due process, particularly under the anti-terrorist laws in force since 1992? He listed a number of those laws, which imposed severe limitations on the application of the international standards embodied in the Covenant, and asked when those limitations would be removed.

12. Mr. FRANCIS said that the report's shortcomings as far as any account of the actual situation was concerned explained why the Committee had been compelled to rely heavily on non-governmental organizations.

13. If, as was stated in paragraph 180 of the report, the capture of Abimael Guzmán together with a great number of the leading cadres of the Sendero Luminoso movement had been carried out on the basis of intelligence work by the police forces in clear demonstration of how law and order could checkmate the negative forces that wished to destroy the country, and if the majority of the leaders of the terrorist movements had been captured and convicted, how could the subsequent atrocities be explained? How had the efficiency of the police authorities been so undermined? And how was it that so many violations of both the Peruvian Constitution and the Covenant had taken place?

14. The Committee had been advised the previous day by Mr. Hermoza-Moya, the Minister of Justice, that judges in trials concerned with terrorist activities had been too lenient. That might well be the case; but if their leniency was due to fear of reprisals, why were the security forces not deployed to ensure round-the-clock protection? Instead, the army and its leading generals had manoeuvred to gain control, supplanting the duly elected Government. Why should the army have taken upon itself responsibility for law enforcement? It had certainly not been given that function.

15. All those circumstances, including the promulgation of the amnesty laws, had culminated in a situation where two separate judiciaries existed, one dealing with selected offences, notably terrorism, and the other - of a more traditional nature - handling more mundane disputes among Peruvian citizens or between them and the authorities. Did that not constitute a flagrant violation of the principle of equality before the law, and hence of article 26 of the Covenant? Article 1 of the Peruvian Constitution provided for the protection of the human person and respect for his dignity as the supreme goal of society and of the State. Article 2 (24) guaranteed the right to personal freedom and security. Persons held in connection with terrorist offences were certainly denied those rights.

16. Some way must be found of releasing the Peruvian Government, established in 1993 on the basis of adult suffrage and free and fair elections, from the predicament into which it had fallen as hostage to a group of military men who had seized power from the Legislature and the Presidency.

17. Mr. LALLAH considered that the report before the Committee read like a purely academic work, unrelated to the realities of the outside world. He was himself particularly concerned with the matters of fair trial and the position of the judiciary, and more especially with the quite extraordinary process whereby judges who lacked not only faces, but even names and voices of their own, filled out papers which they did not sign. Was that not an unacceptable travesty of the judicial process, and quite inadmissible in terms of the Covenant? Fear of assassination had been cited as the reason for such secrecy; he asked how many assassinations of judges had actually occurred and when.

18. Articles 150 to 156 of the Constitution dealt with the National Council of the Judiciary, including selection, appointment and disciplinary procedures. At the same time, there existed a Judicial Coordination Council, with a somewhat different membership. It was not clear to him whether the duties of the two bodies overlapped or duplicated each other. Peru had quite rightly considered that guarantees of the independence and security of tenure of the judiciary should be written into the Constitution; it seemed to him that the proper course of action when ordinary law somehow had an adverse impact on those provisions lay through article 106, and a constitutional amendment by Congress. It would certainly be inadmissible to limit in any way or detract from the powers of the National Council of the Judiciary by an ordinary law.

19. He asked why, as stated in article 154 (2) of the Constitution, judges must be recertified every seven years. He also requested further information on the procedure for the disciplinary proceedings against judges mentioned in paragraph 154 (3) of the Constitution. He associated himself with the point raised by Mr. Pocar regarding the obligatory character of the provisions of international instruments, even for the interpretation of national constitutions.

20. Mr. BÁN said it was clear that the declaration of a series of states of emergency during the reporting period had led to many derogations from rights guaranteed under the Covenant. He requested further information on how many times, and for what periods, states of emergency had been declared during the four or five years covered by the report.

21. It had been said that the Government had introduced the Amnesty Law in a spirit of reconciliation. He doubted that the Law would have that effect, but in any case the population should have been consulted before its promulgation. He had received information to the effect that, according to polls, 80 per cent of the population was opposed to such measures, and even the Roman Catholic Church, with which Peru entertained a privileged relationship under the Constitution, had opposed the law. He asked for further information on the philosophy which had prompted its promulgation. It seemed clear that, while that law relieved human rights violators of their criminal responsibility, it had no effect on their civil or disciplinary responsibility. With regard to the compensation measure, he asked for further information on the criteria, any applicable legislation, the procedures to be followed and the amounts awarded.

22. He took it that members of the police and security forces who had been relieved of their criminal responsibility under the Amnesty Law were still in service. Since that law did not relieve them of disciplinary responsibility, he wondered whether there was any plan to prevent the promotion of those who had committed human rights violations. Furthermore, since Peru had ratified the Optional Protocol to the Covenant, he could imagine situations in which the Peruvian authorities would be unable to comply with the Committee's request for information regarding a complaint because the information in question was protected under the Amnesty Law. He requested further particulars of the mechanisms under the new constitutional framework for follow-up to, and implementation of, the Committee's findings.

23. He asked for details on the new Ministry of Justice Bill of June 1996 regarding presidential pardons. He wondered whether that bill had been adopted and, if not, what the prospects were for its adoption. He had heard that some 5,000 people had been convicted under Peru's anti-terrorist legislation. He wondered what criteria would be used in the selection of cases to be considered for pardons and, since the cases selected would probably be ones involving prima facie innocence, whether there was any plan for granting provisional release pending their consideration. The bill stated that cases must be considered within a specific period of time; he wondered what that deadline would be and what disposition would be made of any cases which were not considered because the authorities had failed to meet the deadline.

24. Lord COLVILLE said that, although his country had years of experience with terrorist problems, its ways of dealing with them were quite different from those adopted by Peru.

25. With regard to the Amnesty Law, he asked who was responsible for determining, in a given case, that an act had been committed in the context of the fight against terrorism, particularly since the courts had been deprived of jurisdiction in such cases. It would appear that anyone in public service could, by making such a claim, acquire immunity from civil or criminal responsibility.

26. Paragraph 25 of the report described the guarantees provided under article 200 of the Constitution, while paragraph 28 referred to Act 25398, which had preceded the enactment of the Constitution, and which had also been mentioned in the oral presentation. However, it was fair to say that no one on the Committee understood the meaning of articles 14 and 29 of that Act. If, as the document stated, the Act had been implicitly repealed by article 200 of the Constitution, he wondered what court had determined that fact, who had stated that it was the case and to what extent that decision was reflected in practice. It was a thoroughly unsatisfactory situation that a series of constitutional guarantees should appear to be derogated from by an act whose provisions were unknown and on which the Committee had no information.

27. It had been stated that the Peruvian authorities had not ordered the police to investigate cases of enforced disappearances because the victims' families and friends had not provided the police with enough information.

However, it was the essence of such disappearances that the victims' families and friends had no information on their whereabouts; there were thousands of such victims, and the burden of investigation should be on the authorities.

28. Mr. MAVROMMATIS said that, having met that morning with Ms. Medina Quiroga and Mr. Hermoza-Moya, he felt that the Committee could expect better follow-up to, and implementation of, the Committee's views in the future. Like his colleagues, he abhorred terrorism and recognized the absolute right of States to prosecute terrorists. However, that must not lead to a vicious circle of violence, or to violations, of the fundamental human rights and freedoms. While article 4 of the Covenant authorized States to derogate from their obligations under the Covenant in times of public emergency, terrorism was not usually treated as a permanent phenomenon. To include in the Constitution a chapter on states of emergency (art. 137) seemed tantamount to giving up all hope of an end to terrorism.

29. He was also concerned by the fact that the military courts were enshrined in the Constitution. A trial presided over by even one faceless judge was no longer a public trial. Moreover, only very limited appeals against the sentences handed down by such courts were possible, whereas the Covenant stated that any sentence must be subject to appeal. It seemed that, at the time when the new Constitution was being drafted and promulgated, the Peruvian legislators had been carried away by the urgency of the current situation and had failed to examine the country's obligations under the international instruments to which it was a party, including the Covenant.

30. The CHAIRMAN, speaking in his personal capacity, noted that, while article 4 of the Covenant permitted the declaration of states of emergency, the Peruvian delegation had stated orally and in writing that the country had been pacified. Under those circumstances, the continuing states of emergency in some regions were in violation of the Covenant. The authorities' failure to investigate cases of enforced disappearances was unacceptable under article 2 of the Covenant, which guaranteed an effective remedy for victims of human rights violations. The fact that enforced disappearances constituted a crime against humanity in which the victims were not present only increased the State party's obligation to investigate and punish them.

31. With regard to the amnesty laws, he agreed with the statements made by other members of the Committee and, in particular, with Mr. Pocar's remarks regarding the Committee's general comment 20 of 1992. Moreover, general comment 20 was an interpretation by the competent body of an international instrument to which Peru was a party. Since the general comment was a public document and had been issued prior to the promulgation of the two amnesty laws, the Peruvian authorities should have been aware that the laws in question were in violation of the Covenant. Furthermore, the laws were discriminatory in that they applied to government officials responsible for human rights violations. By promulgating such laws, the Peruvian authorities had made themselves accomplices in the acts with regard to which amnesty had been granted.

32. Mr. Hermoza-Moya had said that there was a need to foster confidence in the judicial system; however, some of the measures enacted by the Government seemed more likely to have the opposite effect. He concurred with

Mr. Mavrommatis's remarks on faceless judges and military courts. Such courts could not be independent, because they were made up of military personnel, who were obliged to obey their hierarchical superiors. As others had stated, the existence of faceless judges was a violation of article 14 of the Covenant.

33. The Judicial Coordination Committee made the judicial branch subordinate to other powers; in particular, it could be influenced by the executive in such a way as to violate the principle of separation of powers. He requested more information on the creation of special tribunals to improve the administration of justice.

34. Despite his personal hatred of terrorism, as a member of the Committee he could not accept the way in which Abimael Guzmán and other terrorists had been treated since their capture. They were entitled to the same judicial guarantees as other prisoners; the fact that Guzmán had been placed in a cage and exhibited like a monkey in a circus was a violation of article 7 of the Covenant, which forbade not only torture but degrading treatment or punishment.

35. Mr. HERMOZA-MOYA (Peru) said that terrorism in Peru had special characteristics. He knew of no other subversive movement, anywhere in the world, that had such insane goals and constituted such a danger to humanity as the Sendero Luminoso. Peruvian society had suffered greatly from it, morally, physically and financially. Those who struggled to defend society and the Peruvian State had been forced to fight a faceless enemy, which recruited children as young as seven years old and forced hapless members of indigenous groups to take part in its destructive campaign. Many members of the armed forces had sacrificed their lives in the struggle to preserve the nation. Some democratic guarantees and judicial safeguards had had to be abrogated in the process. In 1992, however, the President of the Republic had taken a heroic decision to put an end to terrorism once and for all, and to engage in a programme of reconstruction. Patient and professional intelligence work had enabled the government forces to capture the main leaders of the terrorist groups and thus begin the process of pacification. Since then, there had been a marked decline in subversive activities, and many peasants had been able to return to their land. Whereas, before, the country had been in ruins, with an enormous budget deficit and raging inflation. Peru was now able to play a leading role in Latin America and offer a peaceful haven for external investment.

36. Turning to the questions put by Committee members, he said that reference had been made to the death penalty, and it had been suggested that its inclusion in the 1993 Constitution violated Peru's international obligations under the San José Pact. Article 140 of the 1993 Constitution laid down that the death penalty could be applied only in cases of treason during war and for acts of terrorism. Before that provision had been adopted, life imprisonment had been the maximum penalty. No one had ever been executed for treason.

37. A question had been asked about the imprisonment of innocent persons. He believed that that problem was not exclusive to Peru. There were people in prison through human and judicial error in all countries. There was provision for the review of sentences and, where innocence was proved, remedial steps would be taken under appropriate legislation. Indigenous communities in Peru

had suffered greatly from the terrorists' genocidal activities and many had been enrolled in terrorist groups against their will. That situation was being corrected through a humanitarian approach and special attention to the needs of indigenous masses.

38. Much of the criticism voiced of the Peruvian Government's activities was attributable to reports put out by non-governmental organizations, and in particular the Coordinadora Nacional de Derechos Humanos and Amnesty International. For the most part, the information advanced as fact in their reports was completely untrue. He had himself met with representatives of Amnesty International at the current session and had asked why they presented such a distorted picture of the situation, through the use of misleading euphemisms such as "political prisoners" and "prisoners of conscience" to denote criminal terrorists. The numbers of persons described as victims of aggression by the State were completely arbitrary, without any statistical or scientific basis. All the charges in the reports were based on information from third parties and none had as their source, as logic would have demanded, official State information or information taken from the judicial proceedings which had supposedly been the outcome of action by the State. The arguments put forward by those two organizations could not be regarded as valid or the facts described in them as real. Their charges regarding degrading conditions of imprisonment were quite false, as the International Red Cross could bear witness. Representatives of the Red Cross were able to visit prisons in Peru and report on them regularly, as well as to provide humanitarian assistance. They would confirm the humane treatment afforded to prisoners in Peru.

39. Another matter to which all members had referred was the Amnesty Law. The Committee did not seem to differentiate between amnesty and impunity, a distinction which should be stressed. Amnesty, which could only be granted by a law adopted by Congress, was the equivalent of forgetting that a crime had been committed. That crime must, of course, have been committed prior to the law in question, which could not govern later activities. The law not a mandate of impunity for acts in violation of human rights but was part of the whole pacification process and followed other measures designed to make the anti-terrorist legislation more flexible. For example, the provision that a lawyer could defend only one terrorist had been abrogated and lawyers were now free to defend as many persons as wished to retain them. There had been an historic reason for that provision: Peru had suffered much from the legal arm of the Sendero Luminoso, which, behind a screen of democratic principles, had played an active part in its criminal activities. Amnesty thus formed part of the whole process of national pacification and reconciliation. As far as the victims of criminal acts were concerned, the State had paid compensation to their heirs in fulfilment of the guarantees in the Constitution. That whole process had led up to the legitimate adoption by Congress of the Amnesty Law.

40. Questions had also been asked about the so-called "faceless judges" and secret military tribunals. During the worst of the terrorist activities, some 300 rural magistrates had been killed, while in Lima judges had been assassinated in the streets. When judges whose identity was known pronounced sentence, they were immediately subjected to threats against themselves and their families. Out of fear, many judges had stopped work or ceased to apply the law, which had led in the end to contempt for the judicial power.

"Faceless judges" had been introduced in order to guarantee that the law was applied. They were not anonymous; they were identified by a code number and their names were known to the Supreme Court. All of them were career members of the judiciary. The secret tribunals, which had been called an instrument of political power, also consisted of career judges, and many of them had found accused persons not guilty of treason to the State.

41. A question had been asked about arbitrary acts committed during remand in custody. According to the Constitution, a warrant was needed for arrest and an offender must be brought to trial within 24 hours, except in cases involving terrorism and drugs, where the period of detention could be up to 15 days. There was no licence given to the police during that time to violate human rights. The Public Prosecutor's Department had to be informed immediately and the prisoner allowed to be visited by a doctor of his choice and to communicate with his lawyer at all times. A prisoner who suffered ill-treatment, or his family or a friend acting on his behalf, could complain to the public prosecutor and demand justice. Every aspect of due process of law was complied with, except, for reasons of security, the requirement that the trial should be public.

42. Questions had been asked about the reorganization of the judiciary. The separation of powers was strictly observed in Peru and the executive branch did not interfere with the judicial apparatus - the courts, the Public Prosecutor, the prison authorities and so on. The judicial Coordination Council had no powers to intervene in the administration of justice. The establishment of special courts, such as those for drug trafficking, was for reasons of speed and effectiveness. They were presided over by the same career judges and personnel as the ordinary courts, who were not chosen for their political affiliation, but simply specialized in those cases. The new courts were yielding the results that society demanded. The administration of justice was becoming speedier and more effective, and there was no interference by the legislative or executive branch. The new measures were approved by the public, who as the users of the legal system, demanded an organization that would provide a legal framework for the peace and security of the nation.

43. Mr. REYES-MORALES (Peru) said, in reply to the question about the steps taken by the Government in response to complaints of enforced disappearances, that a special law, Decree No. 25592, had been enacted to punish officials found guilty of that offence. The Public Prosecutor kept a national register of such complaints and forwarded it to the Ministry of Justice, which was then responsible for collecting information from other bodies. The Public Prosecutor was responsible for proving the facts. That was not always possible, unfortunately, but if the complaints of presumed violations of human rights made in 1984 were compared with the figures for 1995 and 1996, there had clearly been an advance in limiting enforced disappearances.

44. The Government had adopted a number of procedural measures in response to the Committee's recommendations. In reply to the questions about anti-terrorist legislation, he said that the Government had committed itself to making the law more flexible, a policy which was set out in Law No. 26248. Some important changes had ensued. The guarantees abrogated by article 6 of

Decree-Law 25659 had been restored and provision had been made for special procedures in cases of treason and terrorism. Measures were also under way to restore the possibility of conditional release at the judge's discretion.

45. The Flexibility Law abrogated the provision which had empowered judicial organs to condemn terrorists and persons guilty of treason in absentia. That law also abrogated the provision stipulating that lawyers could not defend more than one defendant on terrorist charges. Terrorists could now choose their own lawyers, and lawyers were no longer restricted to taking on the case of only one terrorist at a time. Military law had also been revised to bring it into compliance with the terms of the Covenant, and convicted terrorists could lodge appeals with the Supreme Council of Military Justice. A second Flexibility Law had recently been enacted, which provided for still further revisions, including, for example, the establishment of the deadline of 15 October 1996 for the abolition of the system of faceless judges and the exemption of minors from criminal responsibility.

46. The Repentance Law functioned as a complementary measure to the Amnesty Law. Under the terms of that legislation, more than 400 terrorists had been released.

47. Mr. HERMOZA-MOYA (Peru) said that Peru had invited the Working Group on Arbitrary Detention and the Special Rapporteur on the independence of judges and lawyers to visit Peru and planned to extend a similar invitation to the Special Rapporteur on freedom of expression.

48. Replying to a question raised at the previous meeting, he said that the law establishing the Judicial Coordination Council clearly stated that that body would be overseen by the President of the Supreme Court of Justice. The question arose why on the one hand scepticism had been expressed with regard to the role of that body, while on the other certain actors in the international community, such as Japan, the World Bank and the European Union, had shown support for Peru's efforts to streamline and modernize its judicial apparatus.

49. The CHAIRMAN thanked the Peruvian delegation for its replies. Since, however, most of the questions raised had not been answered, various members of the Committee had requested the opportunity to formulate further questions.

50. Mr. BRUNI CELLI said that the Peruvian delegation's replies had been unsatisfactory. The Committee did not deny the need to combat terrorism, but considered that any such campaign must be conducted within the limits of the law. A State should bring intellectual and moral force to bear in the struggle against the enemies of society, rather than mere brute force. It would be useful to know if Peru drew a distinction between the Sendero Luminoso and the Movimiento Revolucionario Tupac Amiral, and whether it employed the same anti-terrorist methods against both of those groups alike. Was a distinction drawn between subversion and terrorism? The delegation had stated that the terrorist movements in Peru were unique and unprecedented in America. Was it in fact true that the Movimiento Revolucionario Tupac Amiral was unlike any other movement that had ever arisen in America? In defence of the measures undertaken by Peru in April 1992, the delegation had submitted that they had led to the capture of terrorist leaders. Was the suggestion

being made that in order to ascertain the truth, people had to be tortured? Or that, in order to combat terrorism, established principles of law had to be breached, among them the prohibition against torture? Was it not possible to combat terrorism without violating the rule of law?

51. The delegation had stated that the death penalty violated international law and that no Peruvian law allowed for that form of punishment. But the Peruvian Constitution itself provided for recourse to the death penalty. The intention, it seemed, was to leave all avenues open, so that if international law were revised to permit the death penalty, it would be permissible under Peruvian law. But that course ran counter to the spirit of article 6 of the Covenant, which encouraged the eventual abolition of the death penalty.

52. The Peruvian delegation had stated that the problem of innocent prisoners was universal. Mistakes were naturally made in all parts of the world, and article 9 (5), of the Covenant therefore stipulated that victims of unlawful detention or arrest would be subject to appropriate compensation. But the Government of Peru enacted a policy of arrest and prolonged detention which breached the fundamental right to the presumption of innocence.

53. The Peruvian delegation's blanket condemnation of NGOs was unacceptable. Although admittedly the NGOs' reports were sometimes exaggerated or imprecise, those bodies had made a crucial contribution toward the promotion of human rights in both the national and international spheres. According to the Government of Peru, no cruel or degrading treatment occurred in that country and the misconception that it did was attributable to NGOs. And yet, the United Nations thematic special rapporteurs as well as the Inter-American Commission on Human Rights, an intergovernmental body, had made the same allegations.

54. The delegation had contended that the granting of amnesty served to erase the past and that the Amnesty Law was a facet of the broader process of national reconstruction. It was widely understood, however, that impunity encouraged the continued commission of human rights abuses. The delegation had submitted that 400 terrorists had benefited from the Amnesty Law; that law, however, made no mention of granting pardon to terrorists but was concerned with civilian and military police personnel. The delegation had also asserted that, since numbers of Peruvian judges had been assassinated, the faceless judges should be seen as potential victims. But if the country had in fact been pacified and reconciled by the Amnesty Law, why should such judges still be necessary?

55. Furthermore, the Peruvian practice of long periods of remand in custody was in itself conducive to abuses of basic human rights, including the right not to be subject to torture. The Committee's general comment 20, described in specific detail the responsibilities of States parties under article 7.

56. Mr. KRETZMER said he agreed with Mr. Bruni Celli's remarks in their entirety. He vehemently objected to the delegation's comments on NGOs. Although the third periodic report of Peru discussed that country's legislative regime and legal system, it provided little hard information concerning the real situation there. It was fortunate indeed that the Committee was able to obtain the necessary missing information from a number

of different NGOs. All members of the Committee were aware that the information provided by NGOs sometimes consisted simply of allegations. But there was no reason why allegations should not receive detailed replies. Sweeping denials were unacceptable.

57. The United States State Department had reported that although the Peruvian Constitution prohibited torture and inhuman or humiliating treatment, such practices were common and that government security forces still routinely tortured suspected subversives at military and police detention centres, using such methods as beatings, electric shock, water torture, asphyxiation and the hanging of detainees by a rope attached to their hands tied behind their backs. He had raised specific questions concerning the measures undertaken by the Government of Peru to respond to those allegations but no answer had been forthcoming. He could definitely not accept the statement that torture did not occur in Peru. He would be surprised to learn of any country that dealt with the problems of terrorism and avoided committing the occasional act of torture. The Peruvian Government could perhaps explain how it could claim to have succeeded in doing so.

58. Mr. PRADO VALLEJO said that Peru's Amnesty Law exonerated all agents of the Government, even those who had committed the most egregious human rights abuses, including murder, enforced disappearance and torture. Peru had explained that such events were attributable to 15 years of struggle against terrorism. The answer in itself violated the principles of international human rights law.

59. Under the Vienna Convention on the Law of Treaties, the terms of international agreements could not be suspended by the enactment of a domestic law. To repudiate its commitments under an international treaty - which were in fact obligations to other States - a State had to renounce that instrument. By acceding to the Covenant, Peru had undertaken to investigate human rights violations, to prosecute the perpetrators of those violations, and to compensate their victims. Only once those three steps were fulfilled could amnesty legislation be envisaged. Peru was therefore in open violation of international law. Article 3 of the Covenant guaranteed equal rights to all persons; under the Amnesty Law, the rights of only some persons were guaranteed. That Law also violated the spirit of article 6, which provided for the imposition of the death penalty only under a specific set of circumstances, and the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, which established that the authors of disappearances should benefit from no amnesty whatever.

60. Of paramount concern to the international community and to the Committee were the vast numbers of deaths and disappearances occurring regularly in Peru. According to the World Organization Against Torture, 30,000 deaths and disappearances had occurred in that country between 1980 and 1992; according to the NGOs, 53 per cent of those deaths and disappearances had been perpetrated by agents of the Peruvian Government. Paragraph 112 of the report stated that the rights to personal freedom and safety could be suspended. Article 4 of the Covenant stipulated, however, that the right to life and to security of person could never be derogated from.

61. Faceless judges and secret trials continued to be subjects of grave concern. Peruvian citizens had been condemned to life imprisonment without due process of law. Although Peru had released 760 unlawfully detained persons, they had been awarded no compensation of any kind.

62. In 1992, the Government of Peru had informed the German Parliament that between 1980 and 1992, 83 inquiries had been undertaken against agents of the Government, and that, of those, only 1 had been prosecuted.

63. Deplorably, the dialogue between the Committee and the Government of Peru had not proved constructive. It was unacceptable to provide vague, inconclusive replies to a body like the Committee, whose task was to ensure the implementation by States parties of the rights guaranteed under the Covenant.

64. Ms. EVATT said she had received no reply to her questions concerning, inter alia, the legal rationale for the suspension of habeas corpus and the legal relationship between the Judicial Coordination Council and the National Council of the Judiciary set up under the Constitution. Surprisingly, the Peruvian Government had seemed to equate the Amnesty Law with the Repentance Law, which required that, in order to be exonerated, individuals should implicate others, and accordingly led to further unjust detentions.

65. No less surprising were remarks put forward by that Government with regard to international human rights organizations, such as Amnesty International. Those organizations had drawn up lists of hundreds of persons in prison who claimed not to have been guilty of violence and terrorism. Peru had in fact freed several hundred of them, which showed that the claims were true. She had before her a list of 120 persons whom she considered prisoners of conscience; the Peruvian Government should inform the Committee of what measures it would undertake to investigate those cases promptly and to release those found to be innocent.

The meeting rose at 1 p.m.